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STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE BOARD OF ACCOUNTANCY

In the Matter of Thomas J. McInerny, CPA	<b>FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION</b>
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This matter came on for Prehearing Conference before Administrative Law Judge Richard C. Luis on September 8, 2006, at the Office of Administrative Hearings in Minneapolis, MN. The record closed October 27, 2006, with receipt of a filing from the Office of the Attorney General correcting citations in the Allegations and Issues portions of the original Notice of and Order for Hearing and Prehearing Conference.

Gregory P. Huwe, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101-2134, appeared on behalf of the Complaint Investigation Committee ("Committee") of the Board of Accountancy ("Board"). There was no appearance by or on behalf of the Respondent, Thomas J. McInerny.

**STATEMENT OF THE ISSUES**

1. Whether the Respondent violated a statute or rule the Board is empowered to enforce, in violation of Minn. Stat. § 326A.08, subd. 5(1); and
2. Whether the Respondent failed to renew his active CPA Certificate in violation of Minn. Stat. § 326A.04 and Minn. R. 1105.2500; and
3. Whether Respondent engaged in activities requiring an active certificate and held himself out to the public as a Certified Public Accountant, in violation of Minn. Stat. § 326A.10; and
4. Whether the Respondent failed to comply with the Board's continuing professional education (CPE) rules by failing to report 120 hours of mandatory continuing professional education during the years ending June 2003, 2004 and 2005, and whether he failed to submit a report showing completion of

required CPE, in violation of Minn. Stat. § 326A.04, subd. 4 and Minn. R. 1105.2500B, 1105.3000, 1105.5600 and 1105.7800; and

5. Whether the Respondent failed to submit the required quality review reports due March 30, 2006, in violation of Minn. Stat. § 326A.05 and Minn. R. 1105.4300, 1105.4600-.5600 and 1105.7800; and

6. Whether the Respondent failed to meet requirements for issuance or renewal of his or his firm's certificate, registration or permit, or for practice privileges, in violation of Minn. Stat. § 326A.08, subd. 5(a)(8); and

7. Whether the Respondent failed to appear before the Board, in violation of Minn. R. 1105.1300 and failed to respond to communications from the Board in violation of Minn. R. 1100.1200; and

8. Whether the Respondent failed to notify the Board in writing within 30 days of any change in address, in violation of Minn. R. 1105.1100.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. The Board issued the Respondent, Thomas J. McInerny, a CPA Certificate on March 21, 1980, and a Sole Proprietor Firm Permit on April 11, 2000.

2. The Notice of and Order for Hearing and Prehearing Conference in this matter was served on the Respondent by certified and first-class mail to the Respondent's last known address at 2146 Hartford Avenue, St. Paul, MN 55106, on August 3, 2006. The Respondent signed a receipt of the certified mailing and the receipt was returned to the Attorney General's office.

3. The Notice of and Order for Hearing and Prehearing Conference mailed to the Respondent included the following notice, on page 4:

Respondent's failure to appear at the prehearing conference or the hearing may result in a finding that the Respondent is in default, that the Board's allegations contained in this Notice and Order may be accepted as true, and this proposed action may be upheld.

4. The Respondent did not file any Notice of Appearance with the Administrative Law Judge or make any prehearing request for a continuance or any other relief. The Respondent did not appear at the Prehearing Conference scheduled for September 8, 2006, or have an appearance made on his behalf.

5. Because the Respondent failed to appear at the Prehearing Conference in this matter, he is in default. Pursuant to Minn. R. 1400.6000, the

allegations contained in the Notice of and Order for Hearing and Prehearing Conference are taken as true and incorporated into these Findings of Fact.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Board of Accountancy have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 214.10 and 326A.08.

2. The Board has given proper notice of the hearing in this matter and has fulfilled all procedural requirements of law or rule.

3. The conduct described in the Notice of and Order for Prehearing Conference and Hearing constitutes violations of Minn. Stat. §§ 326A.04, 326A.05, 326A.08 and 326A.10 and Minn. R. 1105.1100, 1105.1200, 1105.1300, 1105.2500, 1105.3000, 1105.4300, 1105.4600-1105.5600, and 1105.7800, as specified in the corrected "Allegations" portion of the Notice and Order for Hearing and Prehearing Conference.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RECOMMENDED that disciplinary action be taken against the CPA Certificate and Sole Proprietor Firm Permit of Thomas J. McInerney.

Dated: November 22, 2006

s/Richard C. Luis

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RICHARD C. LUIS

Administrative Law Judge

Reported: Default

### **NOTICE**

This report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner.

Parties should contact Doreen Frost, Executive Director, Board of Accountancy, Suite 125, 85 East Seventh Place, St. Place, St. Paul, MN 55101, (telephone (651) 296-7937) to learn the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.